PART IV

Section 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute, between the workmen and the Management of Janson Surgical Co., No. 70, Arcot Srinivasachar Street, Bangalore-2.

Award of the Labour Court, Bangalore—published.

Read the following papers :

(1) Letter No. 803/67-68, dated 23rd October 1967 from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 23rd day of October 1967.

PRESENT :

Sri P. T. Kadkol, B.SC., LL.B. .. *Presiding Officer.*

Reference No. 7 of 1967.

Sri A. C. Visweswaran, No. 103, Veerapillay Street, Civil Station, Bangalore-1 .. .. *First Party.*

Vs

The Management of Janson Surgical Co., No. 70, Arcot Srinivasachar Street, Bangalore-2 .. .. *Second Party.*

Reference

G. O. No. LMA 9 LLD 67, dated 27th January 1967.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Janson Surgical Co., Bangalore, have referred it to this court for adjudication under Section 10(1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 9 LLD 67, dated 27th January 1967, setting out the following points of dispute for adjudication :—

> "Is the management of Janson Surgical Co., No. 70, Arcot Srinivasachar Street, Bangalore-2, justified in dismissing Sri A. C. Visweswaran ? If not, what is the relief the petitioner is entitled to ?"

2. Though the Order of Reference mentions the dispute as existing between the workmen and the management of Janson Surgical Co., Bangalore, it is really between the aggrieved workman Mr. A. C. Visweswaran and the Management of Janson Surgical Company, Bangalore. The dispute is regarding the alleged termination of the service of Visveswaran by the Management on 16th April 1966. The Government have made this Reference, presumably under Section 2-A of the Industrial Disputes Act, 1947, read with Section 10 (1) (c) thereof. The cause of Visveswaran has not been sponsored, either by the other workmen in the Establishment or by any Trade Union.

3. Visveswaran has submitted his statement of claims dated 15th March 1967. The averments made by him, therein, these :—

The proprietrix of Janson Surgical Company was one Smt. Chandrabai Ammal. Her husband T. N. Janakiram, was the Manager thereof. He was employed by Chandrabai Ammal and Janakiram in February 1964, on a salary of Rs. 200 per month and a commission of one per cent on the total turn over and bonus equivalent to two months' wages per year. He received his commission of one per cent and bonus for the years 1964 and 1965. His services were terminated without any reasonable cause, with effect from 16th April 1966. The Management owes him Rs. 1,675 as detailed. Hence it should be directed to pay him the said amount, etc.

4. It may be specifically noted here that Visveswaran has prayed for his reinstatement in the Establishment.

5. Mr. T. N. Janakiram has submitted the statement of objections dated 11th May 1967 on behalf of the Management. The contentions raised by him are these :—

The conduct and attitude of Visveswaran were unsatisfactory and his attendance was irregular. He also misappropriated some

amount belonging to the Establishment. When the management questioned him about those matters, Visweswaran voluntarily stayed away from work, with effect from 1st December 1965. It is false to say that he worked till 15th April 1966 and his services were terminated by the Management with effect from the next day. Visveswaran is related to the family. Hence, even after 1st December 1965 the Management used to advance him monies, to meet his needs. Visweswaran has still to account to the Management some articles taken by him, to the value of about Rs. 1,000. If these things are taken into account, it would be seen that the Management owes nothing to Visweswaran. Since March 1966, Visweswaran has started doing business in the same line. The Management has given him some articles on credit for his new business. The Management owes nothing to Visweswaran. Hence the Reference be rejected, etc.

6. On these pleadings, the following additional issues have been framed on 7th June 1967 (*Vide* Order Sheet) and set down for hearing :—

(1) Does the First Party prove that the workman Visweswaran has been dismissed from service by the second party on 16th April 1966 ?

(2) Does the Second Party prove that Visweswaran has abandoned service voluntarily ?

(3) What Award ?

Parties were asked to lead evidence on these issues and they have done so. Visweswaran has examined himself as W.W.1. For the Management, Vijayarangam has been examined as M.W.1. This is all the evidence in the case.

7. As noted by me above, Visweswaran has not prayed that he be reinstated in service under the Management of the Second Party. All that he wants from the Second Party, is a sum of Rs. 1,675 as set out in the statement of claim. This amount is made up of the following items :—

		Rs.
1.	Salary for 5 months and a half from November 1965 to 15th April 1966 at Rs. 200 per month.	1,100 00
2.	Bonus for two months as agreed for the year 1965-66.	400 00

		Rs.
3.	Commission on turn over for 1965-66 on Rs. 40,000 at one per cent.	400 00
		1,900 00
4	Less Advance received from time to time till March 1966.	225 00
	Total amount due	1,675 00

8. In his deposition before me (W W 1) Visweswaran has stated :—

> "I do not want reinstatement now. I may be awarded service compensation for the service rendered by me. (Para 6).
>
> I have received salary up to December 1965. Some salary is still due to me from the Second Party. I will file a proceeding in the Court of the Authority under the Payment of Wages Act, for recovering the amount due to me as arrears of salary. So, my service compensation may be awarded to me. I do not want anything else (Para 7) "

9. An employee is entitled to Retrenchment Compensation under Section 25F of the Industrial Disputes Act, only in case, he has been retrenched. This retrenchment compensation, in common parlance, is called "Service Compensation" In the case on hand it is nobody's case that Visweswaran has been retrenched, within the definition of that word as given in Section 2 (oo) of the Industrial Disputes Act and within the meaning thereof, as propounded by the Supreme Court and all the High Courts. Visweswaran can not, therefore, demand service compensation as a matter of right.

10. The witness for the Management is T. J. Vijayarangam. Chandrabai Ammal, who died in 1964, was his stepmother. T. K. Janakiram, who has signed and presented the statement of objections, is the husband of Chandrabai Ammal and father of Vijayarangam. T. K. Janakiram is a victim of paralysis and the Establishment is now managed by Vijayarangam. The aggrived workman Visweswaran is the husband of T. K. Janakiram's sister's daughter. All these facts are admitted on both hands.

11. Visweswaran has sworn before me that Janakiram sent word to him through Jayaram that his services were not required.

This Jayaram, as stated by Vijayarangam, is his (Vijayarangam's) uncle. Jayaram has not been examined, by either party. Vijayarangam has stated that Visweswaran left service, of his own accord. There is no particular reason to prefer the oath of one to that of the other. But since Visweswaran is not seeking reinstatement, the question whether his service was terminated or he abandoned it voluntarily, would lose all significance. Hence, I am of the view that there is no need to record any finding, either on the first or the second issue.

12. Visweswaran has stated that he was appointed on a salary of Rs. 200 per month *plus* one per cent commission on the total turn-over *plus* a bonus equivalent to two months' salary per year. This means that all the three items, or at any rate, the first two, would be his wages or salary. He has stated that to recover the arrears of salary, he would move the Authority under the Payment of Wages Act. He may do so, if permissible and if so advised as regards, bonus, if it is part of the agreed wages, Visweswaran may include it in his claim before the Authority under the Payment of Wages Act. If it is not part of the Wages, he can not receive it in this court because, he has not said that the Management has declared bonus for the year in question. So far as this proceeding is concerned, I can not award him any of the monetary claims made by him, for the foregoing reasons.

13. This leaves us only with the prayer of Visweswaran for service compensation. With regard to this claim, Vijayarangam has stated :—

> " We are willing to pay him the service compensation due to him according to law (Para 6).

But according to law, Visweswaran is not entitled to any compensation, under Section 25F of the Act because he has not been retrenched. He can not also be given any compensation by way of gratuity, because no scheme for payment of gratuity is proved to exist, in the Second Party Establishment. In these circumstances, I am of the opinion that Visweswaran is not entitled to get any relief from this Court.

14. **Hence, I make an Award as under :—**

AWARD

1. The reference and all demands made by Visweswaran, do stand rejected subject to the observations made regarding the arrears of salary or wages alleged to be due to him. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, dated 28th October 1967.

S. *O*. 2113. WHEREAS by State Government Order No. LMA 9 LLD 67, dated 27th January 1967, the Industrial Dispute between the Workmen and the Management of Janson Surgical Co., No. 70, Arcot Srinivasachar Street, Bangalore-2, was referred to the Labour Court, Baugalore, for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 9 LLD 67].

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.